

No. 79839-7

MADSEN, J. (concurring)—I agree with the majority opinion and write separately only because I do not want the obvious to be lost: RCW 70.160.030 prohibits smoking “in a public place *or in any place of employment.*” (Emphasis added.) The dissenters say that “private facilities” are excluded from the law, regardless of whether people are employed within the facility. If they are correct, then, as the majority points out, an office building that is not open to the public, i.e., a “private facility,” will be excluded from the ban, despite the fact that the building may house hundreds of employees. This defies the “common sense” which the dissenters so liberally call upon, as well as the plain reading of the statute. “Our job,” is not, as Justice Johnson says, “to apply the law as the average informed voter understood the exemption in RCW 70.160.020(2)” —“our job” is to apply the law as it is written, respecting the right of the people to speak through the initiative process, regardless of our personal preferences. Dissent (J.M. Johnson, J.) at 6.

AUTHOR:

Justice Barbara A. Madsen

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WE CONCUR:

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